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35164

April 22, 2005

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20006

VIA FED EX

**RE: STB Docket No. AB-55 (Sub-No. 568X)
CSX Transportation, Inc. -- Abandonment
Exemption in Franklin County, Pennsylvania**

**ENTERED
Office of Proceedings**

APR 25 2005

Dear Mr. Williams:

**Part of
Public Record**

Enclosed herewith please find the original and 11 copies of the Reply of New Franklin Properties, LLC ("NFP") to CSX Transportation, Inc.'s, Motion to Strike.

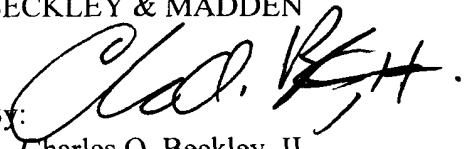
Please file the original and 10 copies, and stamp and return one of the copies to us in the enclosed self-addressed, stamped envelope.

If you need anything further from us to complete the filing of the Reply, then please do not hesitate to contact me. Thank you for your courtesy and assistance in this matter.

Very truly yours,

BECKLEY & MADDEN

By:


Charles O. Beckley, II

cc: Louis E. Gitomer, Esquire (via Fed Ex)
Thomas J. Finucane, Esquire (via Fed Ex)
Mr. Frederick Armstrong Fox

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

**REPLY OF NEW FRANKLIN PROPERTIES, LLC, TO CSX
TRANSPORTATION, INC.'S, MOTION TO STRIKE**

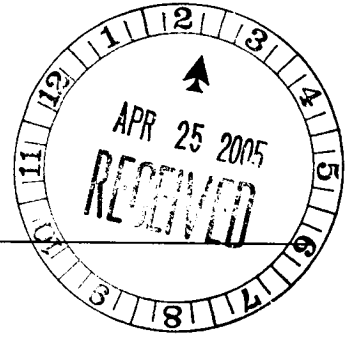
DATED: April 22, 2005

Thomas A. Beckley, Esquire
Charles O. Beckley, II, Esquire

BECKLEY & MADDEN
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Harrisburg, PA 17108-1998
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Attorneys for Petitioner
New Franklin Properties, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

**REPLY OF NEW FRANKLIN PROPERTIES, LLC, TO CSX
TRANSPORTATION, INC.'S, MOTION TO STRIKE**

On April 19, 2005, the last day that it could do so, CSX Transportation, Inc. ("CSXT"), filed a Motion to Strike the Surreply filed by New Franklin Properties, LLC ("NFP"), on March 29, 2005. NFP respectfully files this reply to CSXT's motion. NFP wishes to make three points to the Board.

First, CSXT suggests that NFP did not seek leave to file the Surreply. (*Motion to Strike*, p. 4). This is not correct. In the cover letter that accompanied the Surreply, NFP's Counsel, on NFP's behalf, requested "that the Board grant NFP permission to file the enclosed Surreply." NFP renews this request here. Since 49 C.F.R. § 1100.3 provides that "[t]he rules will be constructed liberally to secure the just, speedy and inexpensive determination of the issues presented," and since CSXT has now filed a reply to the Surreply, NFP respectfully requests that it be permitted to file its Surreply.

Second, CSXT suggests that NFP is “presenting unverified facts.” (*Motion to Strike*, p. 4). This is not correct. NFP incorporated by reference into its Petition for Reconsideration, and quoted from, the 17-page, 39-paragraph Affidavit that Frederick Armstrong Fox filed in this matter on February 17, 2004. (*Petition for Reconsideration*, ¶¶ 24-26). In the event that this is not sufficient, attached hereto as Exhibit A is a supplemental Affidavit of Frederick Armstrong Fox, in which he affirms that the facts averred in NFP’s Petition for Reconsideration, and in its Surreply, are true and correct. In truth, the only party to this proceeding who has “present[ed] unverified facts” is CSXT.

Third, CSXT suggests that there “is no evidence of record” that NFP or its manufacturer tenants require rail service. (*Motion to Strike*, p. 7). This is not correct. Besides the two affidavits submitted by Frederick Armstrong Fox, which set forth the need for rail service in detail, the very fact of NFP’s participation in this proceeding demonstrates the seriousness of NFP’s commitment to preserve rail service to its property, and for the manufacturers which do business there. No rational company would volunteer to spend several hundred thousand dollars to acquire a short section of rail line unless it had a strong business reason for doing so.

CSXT has not answered a single one of NFP’s arguments. CSXT does not dispute that the circumstances relating to the ownership and occupancy of the property served by Segment 1 have changed dramatically during the pendency of this proceeding. CSXT does not dispute that the Borough has no railroad use for Segment 1, and Segment 1 has never been the subject of a trail use request. CSXT does not dispute that its repeated, unexplained requests for extensions of time to abandon Segment 1 since the Board’s July 8, 2004, Decision render CSXT unable any longer to complain about delay. CSXT has not identified any prejudice that it has suffered as the result of its 13 extension requests. CSXT does not dispute that NFP can complete the OFA

process well before the arrival of CSXT's current September 27, 2005, deadline to complete the abandonment.

CSXT argues simply that "private negotiations" would be preferable to allowing NFP to submit an OFA. This, also, is not correct. The OFA process exists to protect businesses whose continued viability depends on reliable access to rail service, and which can and will pay to preserve that service, from the uncertainty and arbitrariness of "private negotiations." NFP, and its manufacturer tenants, Gaumer Industries and Gaumer's Chassis Engineering, are such businesses.

The OFA process, if it is to serve its intended purpose, must maintain the flexibility to adapt to conditions that change during the course of an extended abandonment proceeding. Permitting a late-filed OFA may not always be warranted. But in a case where circumstances have changed dramatically; where the affected railroad has repeatedly asked for extensions of time to consummate the abandonment; where the OFA can be accomplished without the need for further extensions; where the railroad has suffered and will suffer no prejudice; where a real need to preserve rail service for an operating manufacturer exists; and where the party requesting permission to file the OFA could not have met the original deadline because it did not yet exist or own the property served by the line, a request to file an OFA, *nunc pro tunc*, should be granted.

CSXT's Motion to Strike NFP's Surreply should be denied, and, given the unique circumstances of this case, NFP's Petition for Reconsideration should be granted.

DATED: April 22, 2005

Of Counsel

BECKLEY & MADDEN

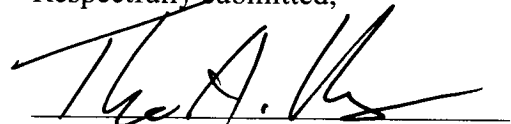
212 North Third Street

P. O. Box 11998

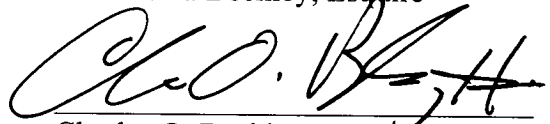
Harrisburg, Pennsylvania 17108-1998

(717) 233-7691

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T.A. Beckley', written over a horizontal line.

Thomas A. Beckley, Esquire

A handwritten signature in black ink, appearing to read 'C.O. Beckley, II', written over a horizontal line.

Charles O. Beckley, II, Esquire

Attorneys for Petitioner New
Franklin Properties, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

AFFIDAVIT OF FREDERICK ARMSTRONG FOX

I, Frederick Armstrong Fox, do hereby depose and say as follows:

1. I am submitting this affidavit on behalf of New Franklin Properties, LLC ("NFP"), a Pennsylvania limited liability company of which I am the sole owner. NFP was formed on December 17, 2001.

2. On February 28, 2005, NFP filed with the Board a Petition, Pursuant to 49 C.F.R. §1117.1, for Reconsideration of the Board's Decision Issued on July 8, 2004, and, Pursuant to 49 C.F.R. § 1152.25(e), to Reopen the Decision Served by the Board on March 9, 1999, to permit the Filing of an Offer of Financial Assistance, *Nunc Pro Tunc*. The averments contained in NFP's Petition for Reconsideration are true to the best of my knowledge information and belief.

EXHIBIT A

3. On March 30, 2005, NFP filed with the Board a Surreply to the responses to NFP's Petition for Reconsideration filed by the Borough of Chambersburg ("the Borough") and CSX Transportation, Inc. ("CSXT"). The averments contained in NFP's Surreply are true to the best of my knowledge, information and belief.

4. My company, Gaumer Industries ("GI"), and my father's company, Gaumer's Chassis Engineering ("GCE"), have a present need for rail service. To remain competitive with foreign manufacturers, we need to purchase raw materials, particularly steel products, in larger quantities. Our need for rail service has intensified during the last year due to sharply increased fuel prices, which have directly impacted on our shipping costs.

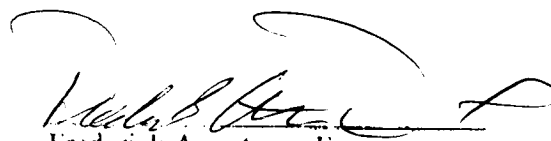
5. We have not yet formally requested rail service from CSXT because, as explained in NFP's Surreply, in order to accept rail deliveries at NFP's facility, the track on NFP's property needs to be repaired and upgraded. NFP stands ready and willing to make the required improvements, but it does not wish to do so unless we know we can control our access to rail service through NFP's ownership of Segment 1.

6. At page 7 of its Motion to Strike, CSXT suggests that "there is no evidence of record" that we require rail service. We have spent tens of thousands of dollars on legal costs alone in our effort to preserve rail service to NFP's industrial facility through the OFA process. We expect that it will likely cost several hundred thousand dollars to acquire Segment 1 and to make the necessary infrastructure improvements on NFP's property. (In this regard, attached hereto as Exhibit 1 is an estimate that we recently obtained of the cost to inspect the two bridges along Segment 1.)

7. GI and GCE are small companies, with limited resources. We would not have incurred, nor would we be willing to incur, these expenses if we did not believe both that we

must have rail service to remain competitive, and that negotiation with a third party for the use of Segment 1 is not, in the circumstances of this case, a viable alternative.

I, Frederick Armstrong Fox, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. I certify that I am qualified and authorized to file this affidavit on behalf of myself, Frederick A. Fox, Kaye A. Fox and New Franklin Properties, LLC. Executed on April 21, 2005.


Frederick Armstrong Fox

COMMONWEALTH OF PENNSYLVANIA

:


SS:

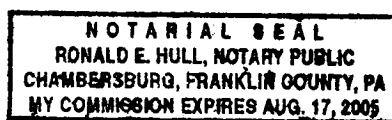
COUNTY OF FRANKLIN

:

On this the 21 day of April, 2005, before me, the undersigned officer, personally appeared FREDERICK ARMSTRONG FOX, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public



(SEAL)

PRINCIPALS

W. B. Conway, P.E.
J. M. Kulicki, Ph.D., P.E.
H. E. Waldner, P. E.
D. F. Sorgenfrei, P.E.
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L. K. Huang, P.E.
Z. Prucz, Ph.D., P.E.
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M. C. Irwin, P.E.
R. A. Little, P.E.
J. L. McKenney, P.E.
R. A. Martino, P.E.
S. R. Eshenaur, P.E.
B. E. Peterson, P.E.
R. J. Eppehimer, P.E.
M. L. Sternitzke, P.E.
W. G. Wassef, Ph.D., P.E.

MODJESKI and MASTERS
Consulting Engineers

SINCE 1893

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April 15, 2005

ASSOCIATES

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J. W. Newman, P.E.
Y. Ouyang, P.E.
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B. J. Dillman, P.E.
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J. M. Egenrieder, C.P.A.

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Mr. Charles O. Beckley, II
Beckley & Madden
P. O. Box 11998
Harrisburg, Pennsylvania 17108-1998

RE: CSXT RAIL BRIDGES
Chambersburg, Pennsylvania
Inspection Services

JN9000

Dear Mr. Beckley:

Modjeski and Masters, Inc. is pleased to provide a proposal for the inspection of two small bridges located on CSX Transportation's (CSXT) main line in the Borough of Chambersburg. We understand the line is currently not used by CSXT. The bridges are located between MP 20.5 and MP 20.8 on the line and the larger structure crosses two tracks operated by Norfolk Southern Corporation.

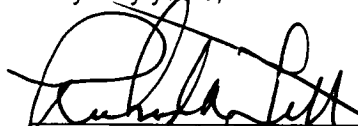
We will perform a visual inspection of each of the structures and provide a written report on their condition. The report will include recommendations for maintenance and repairs to maintain the structures.

The inspections will be performed by a team of two bridge inspectors, one of which will be qualified as an Inspection Team Leader by the National Bridge Inspection Standards, and the American Railway Engineering and Maintenance-of-Way Association. From the photographs provided of the structures, it appears an extension ladder will be required to access the bearings and underside of the larger bridge. Two people will be necessary for safety to set-up and use the ladder and take necessary measurements.

We propose to perform the engineering services as outlined above for a total lump sum cost of \$11,700.00. The amount includes the estimated direct cost of \$5,900.00 for right-of-entry permits and Railroad Protective Liability Insurance from each of the Railroads and flagman services from Norfolk Southern Corporation.

We appreciate the opportunity to present this proposal and look forward to being of service.

Very truly yours,


RICHARD A. LITTLE, P. E.,
Senior Associate

RAL:rr

encl/as

Exhibit A

CERTIFICATE OF SERVICE

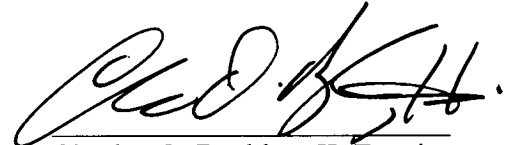
I Charles O. Beckley, II, Esquire, hereby certify that a copy of the foregoing document was served this day upon the persons and in the manner indicated below:

SERVICE BY FED EX:

Louis E. Gitomer, Esquire
Ball Janik, LLP
1455 F Street, NW, Suite 225
Washington, D.C. 20005

Thomas J. Finucane, Esquire
Finucane Law Office, LLP
273 Lincoln Way East
Chambersburg, PA 17201

DATED: April 22, 2005


Charles O. Beckley, II, Esquire